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JUNE 1995

Attachment 4.35-A

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State/Territory: VERMONT

ELIGIBILITY CONDITIONS AND REQUIREMENTS

Enforcement of Compliance for Nursing Facilities

The State uses other factors described below to determine the seriousness of deficiencies in addition to those described at §488.404(b)(1):

N/A

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STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State/Territory: VERMONT

CRITERIA FOR THE APPLICATION OF SPECIFIED REMEDIES FOR
SKILLED NURSING AND INTERMEDIATE CARE FACILITIES
(When and how each remedy is applied, the amounts of any fines,
and the severity of the remedies)

VERMONT STATUTES ANNOTATED - Title 18

Sec. 2008a. Investigation; complaint

(a) The licensing agency may investigate whenever it has reason to believe a violation of this chapter or the rules adopted pursuant to this chapter has occurred.

(b) A person who believes that a violation has occurred may file a complaint with the licensing agency. The licensing agency shall investigate any complaint filed unless it reasonably believes that the complaint is without merit. -- Added 1985, No. 151 (Adj. Sess.), Sec. 7.

Sec. 2008b. Violation; notice

(a) If, as a result of an inspection or investigation, the licensing agency determines that a condition in the facility violates a rule or provision of this chapter, it shall prepare a written notice of violation, which shall state the following:

- (1) a description of each condition that constitutes a violation;
- (2) each rule or statutory provision alleged to have been violated;
- (3) the date by which the violation must be corrected;
- (4) sanctions the licensing agency may impose for failure to correct the violation or failure to provide proof of correction by the date specified;
- (5) the right to appeal the notice of violation as provided in section 2005 of this title; and
- (6) the right to apply for a variance as provided in section 2005a of this title.

(b) The licensing agency may take immediate enforcement action when necessary to eliminate a condition which can reasonably be expected to cause death or serious physical harm to residents or staff before it can be

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eliminated through the provisions of section 2008c of this title. A licensing agency taking such action shall explain that action and the reasons for it in the notice of violation. -- Added 1985, No. 151 (Adj. Sess.), Sec. 8.

Sec. 2008c. Enforcement; protection of residents

(a) The licensing agency shall enforce provisions of this chapter to protect residents of facilities.

(b) The licensing agency may require a facility to take corrective action to eliminate a violation of a rule or provision of this chapter within a specified period of time. If the licensing agency does require corrective action:

(1) the licensing agency may, within the limits of resources available to it, provide technical assistance to the facility to enable it to comply with the provisions of this chapter;

(2) ~~the~~ facility shall provide the licensing agency with proof of correction of the violation within the time specified; and

(3) if the facility has not corrected the violation by the time specified, the licensing agency may take such further action as it deems appropriate under this section.

(c) The licensing agency may impose an administrative penalty against a facility for failure to correct a violation or failure to comply with a plan or corrective action for such a violation, as follows:

(1) up to \$5.00 per resident or \$50.00, whichever is greater, for each day a violation remains uncorrected if the rule or provision violated was adopted primarily for the administrative purposes of the licensing agency;

(2) up to \$8.00 per resident or \$80.00, whichever is greater, for each day a violation remains uncorrected if the rule or provision violated was adopted primarily to protect the welfare or the rights of residents;

(3) up to \$10.00 per resident or \$100.00, whichever is greater, for each day a violation remains uncorrected if the rule or provision violated was adopted primarily to protect the health or safety of residents;

(4) for purposes of imposing administrative penalties under this subsection, a violation shall be deemed to have first occurred as of the date of the notice of violation.

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(d) The licensing agency may, after notice and an opportunity for a hearing, suspend, revoke, modify or refuse to renew a license upon any of the following grounds:

(1) violation by the licensee of any of the provisions of this chapter or the rules adopted pursuant to this chapter;

(2) conviction of a crime for conduct which demonstrates the unfitness of the licensee or the principal owner to operate a facility under this chapter;

(3) conduct inimical to the public health, morals, welfare and safety of the people of the state of Vermont in the maintenance and operation of the premises for which a license is issued;

(4) financial incapacity of the licensee to provide adequate care and services; or

(5) failure to comply with a final decision or action of the licensing agency.

(e) In the interest of the public health, safety and pursuant to the provision for the summary suspension of a license in section 814(c) of Title 3, the licensing agency shall suspend the license of a nursing home which has been administered by a provisional administrator licensed under section 2061 of this title for the preceding 90 days and which nursing home is not presently administered by an administrator who is permanently licensed under section 2055 of this title.

(f) The licensing agency may suspend admissions to a facility or transfer residents from a facility to an alternative placement, or both for a violation which may directly impair the health, safety or rights of residents or for operating without a license. Residents subject to transfer shall:

(1) be allowed to participate in the decision-making process of the agency concerning the selection of an alternative placement;

(2) receive adequate notice of a pending transfer; and

(3) be allowed to contest their transfer in accordance with the procedures in section 2015 of this title.

(g) The licensing agency, the attorney general or a resident may bring an action for injunctive relief against a facility in accordance with the Rules of Civil Procedure to enjoin any act or omission which constitutes a violation of this chapter or rules adopted pursuant to this chapter.

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(h) The licensing agency, the attorney general or a resident may bring an action in accordance with the Rules of Civil Procedure for appointment of a receiver for a facility, if there are grounds to support suspension, revocation, modification or refusal to renew the facility's license and alternative placements for the residents are not readily available.

(i) The licensing agency may enforce a final order by filing a civil action in the superior court in the county in which the facility is located, or in Washington superior court.

(j) The remedies provided in this chapter are cumulative. -- Added 1985, No. 151 (Adj. Sess.), Sec. 9.

2055

Revision note. At the end of subsec. (3), substitute "section 2055 of this title" for "section 2055" to conform reference to V.S.A. style.

Cross references. Revocation or suspension of license for unauthorized human immuno-deficiency virus (HIV) testing, see Sec. 1128 of this title.

Sec. 2009. Confidential Information

Information received by the licensing agency through filed reports, inspection, or as otherwise authorized under this chapter, shall not be disclosed publicly in such manner as to identify individuals or facilities, except insofar as such disclosure results in a notice of violation pursuant to section 2008b of this title or any enforcement action under this chapter. -- Amended 1985, No. 151 (Adj. Sess.), Sec. 10.

Revision note. At the end of the section, substituted "section 2008b of this title" for section 2008b" to conform reference to V.S.A. style.

1985 (Adj. Sess.) amendment. Substituted "insofar as such disclosure results in a notice of violation pursuant to section 2008b or any enforcement action under this chapter" for "in a proceeding involving the question of licensure, or under court proceedings" following "except".

Sec. 2013. Criminal penalty

A person who knowingly violates the licensure, reporting of unlicensed facilities, or confidentiality requirements of this chapter or the provisions relating to placing, referring or recommending placement of a person in an unlicensed facility shall be fined not more than \$500.00 or imprisoned not more than six month, or both. -- Amended 1985, No. 151 (Adj. Sess.), Sec. 11.

1985 (Adj. Sess.) amendment. Amended section generally.

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